

## Justice for Native Americans, more than a century later

Aug. 26, 2020 at 1:54 pm | Updated Aug. 26, 2020 at 1:54 pm



Johnson Meninick, director of the Yakama Cultural Resource program, holds a photo of his great uncle George Meninock at the Yakama Museum... (Sofia Jaramillo / Yakima Herald-Republic)

**More** ▾

By [Andrew H. Fisher](#)

*Special to The Times*

“Great nations, like great men, should keep their word,” as Justice Hugo Black said in his dissent from a Supreme Court opinion that permitted the U.S. government to flood part of the Tuscarora reservation in upstate New York. To Black’s rule we should add another: “Great nations, like great men, are not afraid to apologize.”

Legislators in Washington state observed this principle when they passed a law in 2014 enabling Native American defendants tried before 1975 to have their convictions overturned if they were exercising treaty-reserved rights to fish at “usual and accustomed places” off reservation. If those people are now deceased, family members may appeal on their behalf, allowing restorative justice even in cases that date back 100 years.

In 2015, Superior Court Judge Carrie Runge vacated the conviction of Yakama citizen George Meninock, who stood trial a century ago for breaking state law at a traditional fishery called Top-tut on the Yakima River. In July, the Washington State Supreme Court finally cleared the name of his fellow defendant, Alec Towessnute, after hearing an

appeal brought by Yakama attorney Jack Fiander. “We cannot forget our own history, and we cannot change it,” the high court declared. “We can, however, forge a new path forward, committing to justice as we do so.”

These decisions are important steps toward reconciliation for a state and a country that have often broken their word and violated treaties with Native nations. For decades after Meninock and Towessnute went to trial, Northwest Indians shouldered a disproportionate share of both the burden of resource conservation and the blame for declining salmon runs, which were actually being decimated by white commercial and sports fishing, habitat destruction, urban-industrial development and dams that also flooded many Indian fisheries and communities. The injustice and irony of it all were painful for Native people. To them, salmon and other foods are sacred gifts from the Creator, not the property of states established *after* the treaties that our Constitution defines as “the supreme law of the land.”

As Meninock testified in 1916, “My strength is from the fish; my blood is from the fish, from the roots and berries. The fish and game are the essence of my life. I was not brought from a foreign country and did not come here ... We never thought we would be troubled about these things, and I tell my people, and I believe it, it is not wrong for us to get this food.”

Washington state has now admitted it was wrong to prosecute men like Meninock and Towessnute for asserting their rights and pursuing their way of life. That acknowledgment is a crucial part of healing old wounds. Committing to justice, though, requires more than merely acknowledging the mistakes of the past. It also means ceasing to do harm in the present. Although the Northwest has come far since the 1970s, when major victories in *U.S. v. Oregon* and *U.S. v. Washington* gave tribes a fair share of the harvest and a say in salmon management, both states continue to interfere with treaty fishing rights.

Only eight months before Judge Runge’s order vacating Meninock’s conviction, the Multnomah County Circuit Court prosecuted Yakama citizen Kelly Sam for illegally dipping smelt in the Sandy River, which his people call Pakiyawaxa wıl̓x̌iná (“the place where the smelt stop”) because of oral traditions associated with it. The Yakama Nation supported Sam’s defense against the Oregon Department of Fish and Game, but the trial judge concluded that without written proof there was no compelling evidence of *any* Indian fishery on the Sandy River in pre-treaty times. By that logic, the stream where white people have caught countless tons of smelt since the late 19<sup>th</sup> century was simply

unknown to or ignored by Northwest Natives until American emigrants came down the Oregon Trail!

Meanwhile, Washington fought 21 treaty tribes all the way to the U.S. Supreme Court in an unsuccessful bid to avoid removing road culverts that prevent salmon from reaching their spawning beds. State Attorney General Bob Ferguson led that effort, then joined Fiander in seeking to overturn Towessnute's 1916 conviction. That sends a mixed message. In law, as in love, it is never too late to say you're sorry. As many people know, though, apologies ring hollow if the person who hurt you keeps doing it. Salmon, and the treaty rights dependent on them, still face many threats, now including climate change. If our society is going to save them from extinction and keep our promises to Native nations, future actions will ultimately speak louder than apologies for the past.

**Andrew H. Fisher** is an associate professor of history at William & Mary in Williamsburg, Virginia. His research and teaching interests focus on modern Native American history, environmental history and the American West. His first book, "Shadow Tribe: The Making of Columbia River Indian Identity," examines off-reservation communities and processes of tribal ethnogenesis in the Columbia Basin.